

MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
100 Maryland Avenue, 4th Floor, Rockville, Maryland 20850

AGREEMENT TO BUILD MODERATELY PRICED DWELLING
UNITS FOR A PERMIT OF 20 OR MORE DWELLING UNITS

THIS AGREEMENT dated the _____ day of _____, 20____,
by and between _____ (**Applicant**) and MONTGOMERY COUNTY,
MARYLAND (**County**).

WHEREAS, the Applicant plans to construct twenty (20) or more dwelling units in the subdivision known as _____, located in Montgomery County, Maryland and to be eligible to receive benefits of the optional density provision afforded by the Zoning Ordinance for Montgomery County, Maryland, Chapter 59, as amended.

WHEREAS, the provisions of Chapter 25A of the Montgomery County Code, 2004, as amended (**Chapter 25A** or **Code**), require that a percentage of the total number of dwelling units in a residential development project be moderately priced dwelling units (MPDUs); and

WHEREAS, the County is willing to issue building permits for the construction of dwelling units under the terms stated in this Agreement and pursuant to the provisions of Chapter 25A.

NOW, THEREFORE, in consideration of the mutual promises, conditions and obligations provided for herein, the parties hereto agree as follows:

1. Applicant agrees to construct _____ total dwelling units in the subdivision, including MPDUs in strict accordance with the construction schedule attached hereto and made a part hereof as Exhibit A.

2. All land owned by the Applicant in whole or in part, or which is under contract to the Applicant in Montgomery County, Maryland, which is available for residential building

development is shown on the Statement of Land Owned, attached hereto, and made a part hereof as Exhibit B.

3. The Applicant must construct MPDUs along with or preceding market rate dwelling units in the subdivision, and the County agrees that compliance with the construction schedule in Exhibit A shall satisfy the MPDU staging requirement and the provisions of Section 25A-(5)(b)(1) of the Code.

4. The County will issue building permits as requested by the Applicant for _____(Subdivision Name). Applicant acknowledges County's authority to suspend or revoke any or all building or occupancy permits issued to Applicant for this subdivision and/or to suspend or deny the issuance of all subsequent permit requests by Applicant for this subdivision, and/or invoke any other of the enforcement measures authorized by Section 25A-10 of the Code, and the Executive Regulations adopted pursuant thereto, for failure to comply with this Agreement.

5. (a) Applicant must offer MPDUs for sale or rental in accordance with the requirement of Chapter 25A and in accordance with any Executive Regulations promulgated, or as may be promulgated, in the furtherance of Chapter 25A. Applicant agrees to offer the MPDUs for sale or rent by completing fully and truthfully the Offering Agreement form provided by the Department of Housing and Community Affairs. The Contract of Sale or the Lease executed by Applicant for the sale or rental of any MPDU must contain language imposing a covenant running with the land invoking the requirements of Chapter 25A. This provision is not to be construed as granting the rental option to those Applicants who are not eligible to rent their MPDUs according to the provisions of Chapter 25A.

(b) Applicant must, at the time of Contract of Sale or Rental Agreement is executed or

otherwise agreed to, or entered into, by Applicant, whether written or oral, or at such other time as may be requested by the County, execute a separate Declaration of Covenants, to run with the land, subjecting the MPDUs to the requirement of Chapter 25A.

(c) The Contract of Sale, Deed, Lease and the separate Declaration of Covenants must contain language as contained in Exhibit C attached hereto, and made a part hereof. (In addition, the duly recorded Deed or executed Lease Agreement must contain specific language, in conspicuous form, subjecting the herein referred property to the Declaration of Covenants, which language shall contain the recordation information for the Declaration of Covenants, including the date of recordation and the liber and folio reference.)

(d) The Declaration of Covenants contained in Exhibit C must be fully executed by the Applicant prior to time the units are offered for sale or rent and must contain the necessary jurat for signatures of either individuals or business entities, as the case may be, in such form as may be required to properly record the Declaration of Covenants among the Land Records of Montgomery County, Maryland. The Declaration of Covenants must be returned to the County for approval, execution and recordation by the County among the Land Records.

6. Applicant, his agents, heirs, assigns or successors, hereby irrevocably assigns to the County all its right, title, interest and obligation to enforce the provisions of the Declaration of Covenants referred to herein during the term the Covenants are in effect; to institute any proceeding in law or equity for the collection of such sums as may be in excess of those allowed by law; or to enjoin any violation or attempted violation of said Covenants or the provisions of Chapter 25A.

7. Applicant must provide a copy of the final contract of sale or lease agreement for each MPDU covered by the building permits issued under the Agreement to the County, as well as

settlement sheets and such other documents and information as may be required by Executive Regulations.

8. The County shall be entitled to enter upon the property and/or into the MPDUs for purposes of inspection at all reasonable times to determine compliance with the Agreement.

9. The number, type, location and development phases of the MPDUs to be constructed by Applicant are shown on the approved preliminary or site plan attached hereto and made a part hereof as Exhibit D. By executing this Agreement, the Applicant certifies that: a) in single-family dwelling unit subdivisions each MPDU must have 3 or more bedrooms; and b) in multi-family unit subdivisions, the number of efficiency and one-bedroom MPDUs each must not exceed the ratio that market-rate efficiency and one-bedroom units respectively bear to the total number of market-rate units in the subdivision.

10. A waiver by the County of a specific default must be in writing from the County, and shall not be a waiver of any other or subsequent default of similar or different nature.

11. No failure on the part of the County to exercise, and no delay in exercising, any right to remedy permitted by law or pursuant to this Agreement will operate as a waiver thereof.

12. Applicant may make written application to the Director of the Department of Housing and Community Affairs or designee for a modification of the construction schedule set forth on Exhibit A, describing the basis for such change. The Director or designee must review the application and make a final determination on the request within thirty days after the application is received by the Director. Applicant may not depart from the schedule set forth on Exhibit A without the prior approval of the Director or designee.

13. Any notices sent pursuant to this Agreement must be delivered in writing to:

Montgomery County:

Department of Housing and Community Affairs
100 Maryland Avenue, 4th Floor
Rockville, Maryland 20850

Attn: Joe T. Giloley, Division Chief

With a copy sent to:

Office of the County Attorney
101 Monroe Street, 3rd Floor
Rockville, Maryland 20850

Applicant:

14. No member, officer or employee of the County, and no other public official of the County will either exercise any function or responsibility with respect to the subject matter of this Agreement during his or her tenure, or for ten years thereafter have any interest, direct or indirect, in the subject matter of this Agreement. This section will not be construed to prohibit any such person from owning an MPDU as a personal residence.

15. This Agreement is binding upon the agents, successors, heirs and assigns of the Applicant.

16. The provisions of this Agreement will survive the execution and delivery of any deeds or leases, and shall not merge therein.

17. Applicant agrees to abide by and comply with all applicable laws and regulations regarding the subject matter of this Agreement, whether or not such laws or regulations are herein specifically enumerated or referred to and Applicant agrees to sign such documents as may be required to effectuate the intent and purpose of this Agreement.

IN WITNESS WHEREOF, Applicant has caused these presents to be executed by

_____ its, _____ and

its corporate seal to be affixed, and does hereby appoint its true and lawful attorney-in-fact to acknowledge and deliver these presents, and Montgomery County, Maryland has on the day and year hereinabove written caused these presents to be signed by Elizabeth B. Davison, Director of the Department of Housing and Community Affairs on behalf of the County, and does hereby appoint the said Elizabeth B. Davison its true and lawful attorney-in-fact to acknowledge and deliver these presents.

WITNESS:

APPLICANT:

BY:

WITNESS:

MONTGOMERY COUNTY, MARYLAND

BY: _____
Elizabeth B. Davison, Director
Department of Housing and Community
Affairs

STAFF REVIEW BY: _____

STATE OF MARYLAND
COUNTY OF MONTGOMERY

I HEREBY CERTIFY that before me, a Notary Public in and for the aforesaid jurisdiction, personally appeared _____, attorney-in-fact for Applicant who is personally well known to me as the person named as attorney-in-fact in the foregoing instrument, and as attorney-in-fact, as aforesaid executed and acknowledged the foregoing instrument in the name and on behalf of Applicant, for the uses and purposes herein contained.

WITNESS my hand and seal this _____ day of _____, 20_____

My Comm. Exp.: _____

NOTARY PUBLIC

IN WITNESS WHEREOF, Applicant has caused these presents to be executed by

_____, its, _____

and its corporate seal to be affixed, and does hereby appoint its true and lawful attorney-in-fact to acknowledge and deliver these presents, and Montgomery County, Maryland has on the day and year hereinabove written caused these presents to be signed by Elizabeth B. Davison representing the Department of Housing and Community Affairs, and does hereby appoint the said Elizabeth B. Davison its true and lawful attorney-in-fact to acknowledge and deliver these presents.

WITNESS:

APPLICANT:

BY:

WITNESS:

MONTGOMERY COUNTY, MARYLAND

BY: _____

Elizabeth B. Davison, Director
Department of Housing and Community
Affairs

EXHIBIT A CONSTRUCTION SCHEDULE

In compliance with Chapter 25A of the Montgomery County Code, 2004, as amended, Applicant agrees that the Units in _____ (Subdivision Name) will be constructed in accordance with the schedule indicated below. Applicant is aware that this schedule must indicate that the MPDUs shall be constructed along with, or preceding, other dwelling units in this subdivision and that failure to comply with this schedule may result in suspension or revocation of any building permit, occupancy permit or subdivision plan associated with the project described herein or such other enforcement measure authorized by Chapter 25A of the Montgomery County Code, 2004, as amended. The MPDU staging plan must be consistent with the site plan enforcement agreement. The applicant must sequence the construction of the MPDUs so that the construction of MPDUs reasonably coincides with the construction of the market rate housing. The last building built must not contain only MPDUs.

Development Phase	No. of Market Priced Units	Mo. & Yr. Of Constr.1/ Start Of Mkt. Priced Units	Mo. & Yr. Of Constr. 2/ Completion Of Market Priced Units	Number of MPDUs *	Mo. & Yr. Of Constr. Start Of MPDUs	Mo. & Yr. Of Constr. Completion of MPDUs
TOTAL UNITS						

1. "Construction Start" is be defined as the date on which footings are poured for the subject units.
2. "Construction Completion" is defined as the date that final inspections by the Department of Permitting Services are completed.

*Applicants submitting an MPDU agreement covering less than an entire subdivision must provide the lot and block numbers for the units to be constructed in that phase of the development covered by this agreement. This information should be provided on a separate sheet of paper and attached to the agreement as an appendix.

EXHIBIT B

STATEMENT OF LAND OWNED FOR COMPLIANCE WITH THE
MODERATELY PRICED HOUSING LAW

Pursuant to Article 25A-5 (h) of the Montgomery County Code, 2004, as amended, Applicant hereby provides a list* which is attached hereto as Schedule A,** describing all land owned in whole or in part, or which is under contract to, the Applicant, in Montgomery County, Maryland, which is available for residential development. Applicant, in consideration for the issuance of Building Permit Application for (subdivision) _____ affirms that the said Schedule A includes all property as described above for which:

1. A preliminary subdivision plan or development plan has been filed or for which a building permit application has been filed; and
2. Public water and sewer will be utilized; and
3. The optional zoning provisions of the Moderately Priced Dwelling Unit Law and/or Zoning Ordinance, are applicable, Article 25A.

Applicant affirms that the attached Schedule A includes all such property in Montgomery County, Maryland and not solely that property within the subdivision which is the subject of this Building Permit Application.

WITNESS:

APPLICANT:

SUBSCRIBED AND SWORN to before me, a Notary Public in and for the State of Maryland, County of Montgomery, by Applicant(s) this ____ day of _____, 20____.

My Comm. Exp: _____
NOTARY PUBLIC

* For any Building Permit Application subsequent to the initial application subject to these requirement, Applicant needs only submit changes to the list of property holdings.

** Schedule A shall contain information stating the owner's name, location and size of parcels, subdivision name, Liber and folio references of latest deeds and Plat Book references.

STATE OF MARYLAND
COUNTY OF MONTGOMERY

I HEREBY CERTIFY that before me, a Notary Public in and for the aforesaid jurisdiction, personally appeared _____, attorney-in-fact for Applicant who is personally well known to me as the person named as attorney-in-fact in the foregoing instrument, and as attorney-in-fact, as aforesaid executed and acknowledged the foregoing instrument in the name and on behalf of Applicant, for the users and purposes herein contained.

WITNESS my hand and seal this _____ day of _____, 20

My Comm. Exp.: _____

NOTARY PUBLIC